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Supreme Court of the United States

October Term, 1977

No. 77-1536

THE INTERLAKE STEAMSHIP COMPANY,
Petitioner,

vs.

ALVIN E. HARBIN,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Sixth Circuit is reported in 570 F.2d 99 (1978) and is appended to the Petition for Writ of Certiorari.

JURISDICTION

Respondent does not question the jurisdiction as set forth in the Petition.

QUESTIONS PRESENTED

The Petition for Writ of Certiorari sets forth a five (5) part, three (3) paragraph question. The Statement of the Case and Petitioner's Argument, in fact, indicate the Question is as follows:

> Whether the Court of Appeals correctly affirmed the maintenance and cure award of the Trial Court based on the provisions of the Agreed Judgment Entry.

STATUTES INVOLVED

Respondent agrees with Petitioner's statement that the Petition for Writ of Certiorari involves no questions regarding the construction or application of constitutional provisions, treatise, statutes or regulations.

STATEMENT OF THE CASE

Respondent adopts Petitioner's Statement of the Case except that Respondent denies Petitioner's broad assertion that "if the underlying jury verdict were to be vacated, the Judgment [for maintenance and cure] would be vacated as well".

The stipulation of the parties regarding a retrial on the issue of maintenance and cure was conditioned on the Court of Appeals overruling the exclusion of evidence allegedly bearing on Respondent's misconduct. The Court of Appeals did not overrule the Trial Court's exclusion of this evidence. Therefore, pursuant to agreement of counsel, the Judgment Entry stands.

REASONS FOR DENYING THE WRIT

Rule 19(1) of the Rules of the Supreme Court provides that a review on Writ of Certiorari will be granted only where there are "special and important reasons" for so doing. Counsel for Respondent respectfully submits that there are two (2) principal reasons why a Writ of Certiorari *should not* issue to Petitioner in the instant case.

The first relates to Petitioner's contention that the Court of Appeals erred in affirming Respondent's award of maintenance and cure. Petitioner asserts that the Court of Appeals affirmed the award of maintenance and cure as the result of an alleged mistake or clerical error. Petitioner bases its allegation of error on Paragraph Five (5) of the Agreed Judgment Entry on the issue of maintenance and cure. Paragraph Five (5) of the Agreed Judgment Entry states:

> The court may enter judgment in the amount of $2,872.00 together with interest from November 27, 1974, in favor of plaintiff and against defendant upon the said Second Count of the Complaint, it being understood nevertheless that *if the judgment* upon the jury verdict of December 8, 1975, hereinbefore entered upon the First and Third Counts of Plaintiff's Complaint should *be vacated and the case remanded* for new trial *upon issues that include the issue of whether plaintiff sustained his injuries and disability as a result of his own misconduct, the judgment herein stipulated upon the said Second Count shall also be vacated* pending the resolution of such issue of whether plaintiff sustained his injuries and disability as a result of his own misconduct, and that the entry of defendant into this stipulation is otherwise without prejudice to any appeal by defendant upon the issue of whether plaintiff sustained his liability as a result of misconduct.

The Agreed Judgment Entry also states in Paragraph Two (2):

> Neither party intends to offer further evidence relating to the claim of plaintiff for maintenance and cure as set forth in the second count of the complaint.

The *only* question relating to the award of maintenance and cure to be resolved on appeal was whether the excluded evidence should have been considered by the Trial Court in determining whether or not Respondent sustained his injuries *as the result of his own misconduct.* The Court of Appeals did *NOT* reverse the Trial Court's ruling on the exclusion of this evidence and, therefore, according to the stipulation, there was *NO* remand "for new trial upon issues that included the issue of whether Plaintiff sustained his injuries and disability as a result of his own misconduct".

The Agreed Judgment Entry provided for a new trial *only* in the event the issue of misconduct was again drawn into issue by the admission of the previously excluded evidence. Petitioner now attempts to bootstrap itself into a position superior to that provided for in the Agreed Judgment Entry. The Court of Appeals correctly affirmed Respondent's award for maintenance and cure. The Court of Appeals holding was in keeping with the language contained in the Agreed Judgment Entry. There has been no clerical error or mistake as alleged by Petitioner and, therefore, Petitioner's Application for Writ of Certiorari should be denied.

Secondly, Respondent asserts that Petitioner has not and cannot comply with Supreme Court Rule 19(1)(B). Rule 19(1)(B) sets forth the consideration governing review on Certiorari. Those considerations are:

> FIRST. "Where a Court of Appeals has rendered a decision in conflict with the decision of another Court of Appeals on the same matter."

The Court of Appeals' decision affirming the award of maintenance and cure is not in conflict with the decision of another Court of Appeals.

> SECOND. "Where a Court of Appeals has decided an important state or territorial question in a way in conflict with applicable state or territorial law."

The issues in the instant case did not involve questions of state or territorial law.

> THIRD. "Where the Court of Appeals has decided an important question of Federal Law which has not been, but should be, settled by this Court."

The question of the scope and meaning of the Agreed Judgment Entry is not such an important question of Federal Law as to require that it be settled by this Court.

> FOURTH. "Where the Court of Appeals has decided a Federal question in a way in conflict with applicable decisions of this Court."

The Court of Appeals decision affirming the award of maintenance and cure does not conflict with any case decided by this Court.

> FIFTH. "Where the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower Court, as to call for an exercise of this Court's power of supervision."

No such departure from the accepted and usual course of judicial proceedings is present in the instant case.

Rule 19(1)(B) is not controlling and does not fully measure the Court's discretion but it does indicate the character of reasons which will be considered in granting or denying a Petition for Writ of Certiorari. Petitioner has failed to allege grounds which either in sum or sub-

stance comply with Rule 19. Petitioner has, therefore, failed to allege sufficient reasons for the granting of its Petition for Writ of Certiorari.

CONCLUSION

It is respectfully submitted that Petitioner has wholly failed to sustain its burden of establishing, under Rule 19, that there are "special and important reasons" why the writ should be granted. The decision below did not involve an important question of federal law which has not been, but should be, settled by this Court; nor has the Court of Appeals decided a federal question in a way to conflict with applicable decisions of this Court or another Court of Appeals on the same matter. The Court of Appeals correctly affirmed the maintenance and cure award of the Trial Court based on the Court of Appeals' determination that the evidence involving or inferring "misconduct" had been properly excluded by the Trial Court.

Respectfully submitted,

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